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MEDICO-LEGAL

Outmoded Treatment

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LORD NATHAN, in his book "Medical Negligence", says that "It may very well be negligent for a practitioner to adhere to a once approved but now outworn and discredited practice." This is not a pious platitude emanating from a legal theorist; it is a practical point about which a decision must be reached when any doctor faces a legal action because of harm alleged to be due to treatment which has fallen into desuetude. Two actions against doctors, one settled a few years ago and one comparatively recently, illustrate the point.

In 1957, after an uncomplicated delivery, an infant did not begin spontaneous respiration. Various methods were used to stimulate breathing and were unsuccessful, so, finally, the obstetrician asked for "warm and cold tubs". The doctor immersed the infant in the warm water and almost immediately realized the water was scalding. The infant suffered first- and second-degree burns to the back, chest, both forearms, hands and fingers. The burned areas healed; there was permanent scarring but residual disability only to the third, fourth, and fifth fingers of the left hand.

The other, and somewhat similar, case involved an infant whose delivery, in 1963, was precipitate and who, like the first patient, failed to breathe spontaneously. The infant was placed in a resuscitator, and at the request of the obstetrician, a consultant who was present poured ether over the baby's abdomen. Some ether must have sprayed on to an exposed heating element in the resuscitator and it ignited immediately. The baby received burns to the scrotum, both legs and feet, to both arms and to the neck and the right cheek. Healing occurred, scars resulted and, though none of them produced disability, it was judged that several would be permanent.

One of the untrue and unfair comment sometimes made about doctors is that they will not give evidence for plaintiffs in actions against other doctors. That this general statement is usually untrue is demonstrated by the presence of medical experts for plaintiffs at almost every malpractice action. Doctors do refuse to testify for plaintiffs, and properly so, when they feel that plaintiffs have no grounds for complaint about the services doctors have rendered them. Doctors refuse also, and quite properly, to testify for other doctors when they feel the other doctors have rendered less than competent services; because this is true, and it should be emphasized that it is proper and right for it to be so, some actions against doctors that, on the face of them, might be considered defensible, must be settled. So it was with these two actions.

A number of doctors were consulted. Stated in general terms, the opinion of these doctors was that they could not honestly help because the treatments used were both of the kind described by Lord Nathan as "once approved but now outworn and discredited". They felt, again stated in general terms, that knowledge of the ineffectiveness of these procedures was widely enough disseminated among doctors that the defendant doctors could not escape responsibility for harm that resulted from treatment which involved risk when no corresponding or greater benefit could be expected. The doctors consulted therefore could not provide helpful testimony.

Without expert testimony to show that the mishaps occurred during the use of necessary and approved treatment it was not possible to justify either doctor's actions, and the claims had to be settled.

Among a doctor's duties is the duty not only to use up-to-date and modern treatment when it is available but to stop using a treatment if it has been demonstrated either that the treatment is more dangerous than it should be or that it is so ineffective that risks outweigh benefits. When the profession as a whole has had demonstrated and has been convinced of the inapplicability or unsuitability or ineffectiveness of a form of treatment, a doctor cannot excuse himself for ill results from such treatments merely by saying he was taught the methods, that they had been standard practice and that he had continued to use them. A doctor may not have any legal responsibility for being in the van of the profession, but he has a responsibility to keep up with the body of the profession.

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